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No. 87-1279

IN THE
Supreme Court of the United States
October Term, 1987

ALEXIA MORRISON, INDEPENDENT COUNSEL,
Appellant,

v.

THEODORE B. OLSON, *et al.*,
Appellees.

On Appeal From the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE REPLY BRIEF AND REPLY BRIEF AMICUS CURIAE OF WHITNEY NORTH SEYMOUR, JR., INDEPENDENT COUNSEL, IN SUPPORT OF APPELLANT ALEXIA MORRISON

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MOTION OF WHITNEY NORTH SEYMOUR, JR., FOR LEAVE TO FILE REPLY BRIEF AMICUS CURIAE

Whitney North Seymour, Jr., Independent Counsel, respectfully moves for leave to file the attached reply brief *amicus curiae* in this case.

While we are aware that the Rules of the Supreme Court do not provide for the filing of a reply brief by an amicus, we seek leave to make this brief submission for the following reasons.

First, Michael K. Deaver is the first individual to be indicted, tried and convicted as a result of proceedings conducted by an Independent Counsel appointed pursuant to the statute under review. Despite the conviction, returned in December 1987 following a two-month jury trial, no sentence has been imposed in the case, which has been stayed pending decision

in the instant appeal. The resolution of the issues now before this Court will therefore have a substantial impact on the Deaver case.

Second, it is clear from the briefs of the parties and other amici that several of the issues now before the Court hinge upon an assessment of the actual operations of an independent counsel's office, and the Court of Appeals' view of these matters. Because Independent Counsel Morrison's case has not proceeded beyond the investigative stage, we sought in our earlier submissions to provide the Court with facts and arguments relevant to these operational issues from the perspective of an Independent Counsel's case which had resulted in a contested trial and jury verdict of guilt. Regrettably, this effort appears to have triggered a predictable adversarial response from amicus Deaver, laden with distortion of the trial and pre-trial record, which threatens to discourage reliance by this Court on the experience with the statutory procedure which can be appreciated from reference to the Deaver case. Mindful of the need to avoid unnecessary burdens on this Court, we have therefore prepared this brief response, in the hope that it clarifies these matters.

Respectfully submitted,

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REPLY BRIEF AMICUS CURIAE OF WHITNEY NORTH SEYMOUR, JR., INDEPENDENT COUNSEL, IN SUPPORT OF APPELLANT ALEXIA MORRISON

In his brief in support of appellees, amicus Deaver seeks to persuade this Court that the investigation and trial in his case "demonstrate the danger to individual citizens of the unaccountable exercise of governmental power outside the structural protections of the constitutional principle of separation of powers." (Deaver Br. 29). In fact, the record of the Deaver case demonstrates the converse of that proposition. A proper understanding of that record puts to rest the imagined fears about the activities of independent counsel conjured up by appellees and their amici. Moreover, such an understanding confirms the wisdom of the congressional judgment of the need for an independent investigative and prosecutive capacity when a conflict of interest arises in the executive branch.

I. THE EFFORT TO SECURE EVIDENCE FROM CANADA WAS ENTIRELY PROPER

Deaver contends that the Independent Counsel's efforts to obtain evidence probative of Deaver's lobbying efforts on behalf of the Government of Canada (and of his perjury about this subject) "provoked an international incident" (Br. 5). The truth is far less sensational.

In fact, the Independent Counsel did nothing that "violat[ed] . . . accepted principles of diplomatic immunity" (Br. 5), but rather merely presented to the court, for judicial resolution, a traditional legal issue: whether Canadian diplomatic immunity had been waived. Although the District Court ultimately ruled that no waiver had taken place, the Court's opinion in no way suggested that the Independent Counsel acted improperly in submitting the matter for judicial resolution. *United States v. Deaver*, Cr. 87-096 (Mem. and Order, June 22, 1987).[1]

Equally off base is Deaver's contention that the Independent Counsel acted improperly in contacting counsel for the Canadian government before trial to determine whether Canada would waive its diplomatic immunity (Br. 5-6). The suggestion seems to be that this episode reveals the

[1]It is noteworthy that when the issue was placed before the District Court below, the trial judge expressly rejected the position advanced by the Departments of State and Justice that a court may not look beyond the State Department's certification of diplomatic immunity to determine whether a witness is subject to compulsory process. (Mem. and Order at 5). It is clear from the trial judge's ruling that the Court regarded the subpoena matter as raising a genuine legal issue suitable for resolution by traditional resort to legal process and judical review.

This fact is also confirmed by recognition that the Deaver investigation involved efforts, through State Department channels, to gain the cooperation of the Korean government as well, but that government absolutely refused to provide any information. There was no basis, therefore, for arguing waiver of diplomatic immunity, and no attempt was made to do so.

undesirability of independent counsel because it shows that an unrestrained prosecutor may "spark[ ] [a] diplomatic crisis. . . ." (*Id.*) The record reveals otherwise.

When this matter was raised in the District Court, the trial judge ruled that Independent Counsel had *not* "done anything unethical, or improper or unlawful." (Tr. Oct. 26, 1987 at 18). Indeed, counsel for the State and Justice Departments conceded in court that, despite the diplomatic considerations involved, it was entirely proper for Independent Counsel to communicate with the Washington, D.C. lawyer retained to represent Canada in the Deaver investigation (*Id.* at 3).

The Court accurately characterized the letter at issue

> as a communication from one lawyer to another as to what would be the likely consequences of an inability to present testimony in one form or another. And most trial lawyers have at one time or another in their careers had to write similar letters to counsel for other parties.

(*Id.* at 8-9). With regard to the claim that Independent Counsel's behavior toward Canada, unrestrained by State or Justice Department influence, interfered with foreign relations by embarrassing the Canadian government, the trial court observed that it had been the decision of the Canadian and United States governments to publicize the private lawyer-to-lawyer communication, and therefore "Canada herself [was] the engine of the embarrassment that she has sustained, if, indeed, she has been embarrassed by the whole exchange." (*Id.* at 8).[2]

[2]One cannot help but harbor the suspicion that the crocodile tears which have been shed over Canadian sensibilities in this matter actually conceal a motive to gather ammunition to use in the battle against the statute under review, even if that requires publicizing matters which sacrifice the genuine concerns of our allies.

In short, nothing in the record supports the proposition that the Independent Counsel acted improperly in pursuing evidence in the possession of the Canadian government, much less that U.S.-Canadian relations were harmed.[3]

Finally, if an independent counsel engaged in such serious misconduct regarding a foreign government as Deaver suggests took place here, the Act provides the Attorney General with a speedy and effective remedy — the independent counsel may be removed "for good cause." 28 U.S.C. § 596(a)(1). The fact that this legislative provision was not even contemplated in the instant case demonstrates conclusively that the specter of an "international incident" was, and remains, imaginary.

2. Deaver Was Not Trapped Into Committing Perjury Concerning TWA

There is no need to respond at length to the canard that the TWA perjury count in the indictment — on which Deaver was convicted of lying to a federal grand jury — was a product of a "perjury trap" (Br. 8 n.4). In pressing this argument Deaver conveys the false impression that the "alleged contact" by Deaver of which the Independent Counsel was apprised had something to do with the TWA-Carl Icahn tender offer, which was the subject matter of Deaver's perjury. Worse yet, Deaver disingenuously fails to inform this Court that the same argument was presented to the District Court (along with the same misrepresentation of fact) and the District Court found it to be absolutely baseless.

Specifically, the trial judge observed,

[3]Significantly, the brief of the United States as *amicus curiae*, submitted by the Solicitor General, makes no claim that the actions of Independent Counsel damaged relations between the United States and Canada.

> Mr. Deaver was a target — in fact, at the time the only target — of Mr. Seymour's grand jury, and had known so from the beginning of the investigation. He appeared voluntarily before the grand jury, had the benefit of counsel close at hand, and had the right, in the circumstances, to refuse to answer any or all questions put to him. He chose to give the answer to the question which now forms the basis for Count Three, as well as others, fully aware that he might not know all that Independent Counsel and the grand jury already knew, and he cannot now complain that their keeping him in ignorance was such fundamental prosecutorial misconduct as to require that the prosecution be abated. Whether the question was unfair, in the sense that Mr. Deaver had not prepared for it, that his recollection was unrefreshed by his interrogator, or that his attention was unfocused on the significance of the answer he gave, are matters for the jury to ponder when it is called upon to determine if his testimony was knowingly false.

(Mem. and Order, June 22, 1987).

The claim of unfair surprise was fully aired before the trial jury, which rejected it in convicting on this count.

3. The Grand Jury's Subpoena Power Was Not Excessively Used

Deaver's assertion (Br. 14) that "Mr. Seymour proceeded to subpoena every document ever generated by Mr. Deaver's firm" is a misleading half-truth. On the day Deaver appeared before the grand jury, he was handed a subpoena nominally covering all of his office files but with an accompany-

ing letter to his counsel explaining that the purpose of the subpoena was to prevent *destruction* or *disappearance* of those documents during the course of the grand jury investigation. Deaver was explicitly told in that letter that he should only produce documents upon specific written request, and a substantial number of his firm's files were never requested or produced. (Letter, Seymour to Miller, June 20, 1986).

When the investigation got underway, Deaver was the first witness to appear before the grand jury. During that voluntary appearance he identified seventeen clients on behalf of whom he and his firm had made contacts with Executive Branch officials (Grand Jury Ex. 4; Gov't Trial Exhibit 36). Thereafter, allegations and evidence of possible violations with respect to fourteen of these clients led to subpoenas or requests for those clients' Deaver-related files. No subpoenas were served requesting files of three of the clients named by Deaver during that grand jury appearance, nor for *any* clients on whose behalf no government contacts were made.

Deaver's own recognition of the legitimacy of the Independent Counsel's inquiry is reflected in the fact that neither he nor any of his clients ever moved to quash a grand jury subpoena at any stage of the investigation, on grounds of overbreadth, hardship, or the like.

These facts cannot support the inference Deaver strains to pull from them, that the limited independence of an investigation conducted by Independent Counsel creates an undue risk of prosecutorial excess.

4. The Supplemental Order Is No Evidence of Undue Judicial Involvement in Prosecutive Decisions

Deaver attempts to construct a cause-and-effect relationship between an alleged "challenge" to the Independent Counsel's jurisdiction and the latter's petition for a supplemental order clarifying the jurisdiction under the original order of appointment. (Br. 14). Deaver's brief appears to refer to letters of transmittal sent with files produced from his office, in which his counsel repeatedly asserted that the inquiry should be limited to two topics. On its face, the order of appointment of May 29, 1986 clearly extended far beyond that "challenge," and the letters were therefore disregarded.[4]

The actual reasons for requesting the supplemental order are stated in the Independent Counsel's petition of December 11, 1986, which is included in the appendix to this brief at page 21a. They had nothing to do with any challenge by Deaver, but anticipated possible challenges by other potential defendants. The petition makes it clear that Independent Counsel was not requesting an *expansion* of his jurisdiction, but rather a *clarification* of what he was authorized and expected to do:

> Although this Court's order of May 29, 1986 appears to include jurisdiction to prosecute such offenses, it would be desirable for the court to clarify its specific intent in order to minimize delays in any possible subsequent prosecutions caused by pro-

[4]Deaver's challenge in the District Court to Independent Counsel's jurisdiction was unsuccessful. In denying Deaver's motion to dismiss a portion of the indictment on jurisdictional grounds, the trial judge ruled that "neither the application nor the order of appointment contemplated that Independent Counsel Seymour's investigative jurisdiction would be confined solely to the instances alleged . . . . the former sought, and the latter authorized an inquiry into Mr. Deaver's post-government service lobbying activities generally;" (Mem. and Order June 22, 1987).

> cedural challenges to the jurisdiction of the Independent Counsel questioning his authority to initiate and conduct such prosecutions. Accordingly, petitioner prays that an order be made and entered providing such clarification. (21-22a)[5]

In sum, by seeking clarification from the Special Division of the scope of its initial order, Independent Counsel was acting with the caution and circumspection which appellees and their amici contend is incompatible with the statutory framework. Once again, they have misread the evidence.

---

[5]Deaver labels the application for the order as "secret" in a vain attempt to make it appear illicit. (Br. 14). That the order was entered *ex parte* is irrelevant; so was the initial order it sought to clarify.

Nor is there any inconsistency between the Special Division's supplemental order and *In re Olson*, 818 F.2d 34 (D.C. Cir. Ind. Couns. Div. 1987). There, Independent Counsel Morrison sought referral from the Court pursuant to 28 U.S.C. § 594(e) of allegations against two former Department of Justice officials. Neither official was within the Independent Counsel's existing prosecutive jurisdiction, and the Justice Department had twice concluded that the allegations did not warrant referral. On that record, the Special Division denied the referral, holding that the statute did not grant it authority to refer allegations to the Independent Counsel when the Attorney General has specifically determined that those allegations should not be pursued.

Merely to state the *Olson* holding is to distinguish it from the Deaver case. The Attorney General had *not* determined that any allegations against Deaver were without merit. And in issuing its supplemental order, the Special Division was *not* responding to a request to refer a new matter to the Independent Counsel for investigation, but to a request to clarify the Independent Counsel's existing power to prosecute.

5. The Referral of a Matter to Independent Counsel by a Congressional Committee is no Evidence of Congressional Aggrandizement

On May 16, 1986, Deaver testified under oath before the Oversight and Investigations Subcommittee of the House Committee on Energy and Commerce. The Special Division appointed Independent Counsel, on the Deputy Attorney General's application, on May 29, 1986. On August 12, 1986, in an action impressive for its bipartisan nature, the Subcommittee's members unanimously concluded "that Deaver may have committed perjury and made false statements before the Subcommittee in violation of sections 1621 and 1001 of Title 18, U.S.C. and thereby obstructed a Congressional investigation in violation of section 1505." (Letter from Rep. John D. Dingell to Whitney N. Seymour, Jr., August 12, 1986). Accordingly, the Subcommittee unanimously directed its Chairman, Rep. Dingell, to refer "for [Independent Counsel's] consideration information" relevant to the possible commission of those crimes.

According to Deaver, this action alone demonstrates that Congress "directed the course of Mr. Seymour's investigation and prosecution," in a way which amounts to unconstitutional legislative aggrandizement. (Br. 18). The claim is simply preposterous, on both the facts and the law. There was *no* congressional involvement in the direction of the investigation and prosecution. The relationship between Independent Counsel and the House Subcommittee was that of a prosecutor and a source of evidence. Most significantly, none of the specific perjury referrals from the congressional committee formed the specific basis for the charge on which Deaver was ultimately convicted. Three allegations were referred. One was included in Count Two (along with other specifications developed independently by the Independent Counsel's in-

vestigation), but Deaver was acquitted on that count. The two other congressional referrals were rejected by the Independent Counsel as not warranting prosecution.

Moreover, there is nothing new about a special prosecutor being responsible for the handling of a perjury case based on congressional testimony. *See, e.g., United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976); *United States v. Chapin*, 515 F.2d 1274 (D.C. Cir. 1975); *United States v. Reinecke*, 524 F.2d 435 (D.C. Cir. 1975). On Deaver's theory, apparently all such prosecutions, as well as similar prosecutions conducted by the Justice Department, *e.g., United States v. LaVelle*, 751 F.2d 1266 (D.C. Cir. 1985) are incompatible with the principle of separated powers, simply by virtue of congressional notification, and release of transcripts of testimony, to the relevant prosecutor.[6]

6. The Statute Does Not Interfere With Executive Branch Control Over Prosecutive Decision-Making

Deaver's response to the argument in our main brief concerning the relationship between the Attorney General's decision to invoke the independent counsel statute, and the Independent Counsel's decision to prosecute, distorts the actual nature of these two decision processes by simultaneous-

[6]The claim also fails because of its transparent, and unsuccessful, attempt to equate the limited congressional involvement entailed in the referral of an allegation with the examples of legislative encroachment on coordinate branch functions recently disapproved by this Court. *E.g., Bowsher v. Synar*, 106 S. Ct. 3181 (1986); *INS v. Chadha*, 462 U.S. 919 (1983); *Buckley v. Valeo*, 424 U.S. 1 (1976). It is clear, however, that the independent counsel statute does not contain the deficiencies of the statutes reviewed in those decisions, for Congress does not exceed its constitutional role by referring information to the prosecutor appointed, pursuant to Justice Department application, to investigate the subject matter.

ly underestimating the breadth of the first decision, and overestimating the scope of the second. (Br. 7-9).

First, Deaver unfairly minimizes the decision to invoke the independent counsel mechanism, which is committed to the unreviewable discretion of the Attorney General or his designate. *Dellums v. Smith*, 797 F.2d 817 (9th Cir. 1986); *Banzhaf v. Smith*, 737 F.2d 1167 (D.C. Cir. 1984) (*en banc*); *Nathan v. Smith*, 737 F.2d 1069, 1077-82 (D.C. Cir. 1984) (Bork, J., concurring). Contrary to Deaver's suggestion that this decision must be regarded as merely a preliminary finding that further investigation or prosecution is warranted, 28 U.S.C. § 592(c)(1), the decision to apply for appointment of Independent Counsel in the Deaver case was a transfer of "investigative and prosecutive authority"[7] from the Justice Department to Independent Counsel. The Deputy Attorney General's application recommended that the Special Division confer "investigative and prosecutive authority" over certain specific allegations, as well as "investigative and prosecutive authority" over certain other allegations, and "over any related matters developed in the course of the independent counsel's investigation."[8] (App. 6a).

This decision was not dictated by a statute which unconstitutionally deprived the Attorney General of his discretionary decision-making power. On the contrary, the 1982 amendments to the independent counsel statute make clear that Con-

[7]*See* Application Pursuant to 28 U.S.C. § 592(c)(1) for the Appointment of an Independent Counsel to Investigate Michael K. Deaver, included in the appendix to this brief, at pp. 1-6a.

[8]The plain language of this application, which was repeated in the Special Division's order, disposes of Deaver's suggestion that Independent Counsel was not empowered to prosecute Deaver for perjury committed after the date of the application. (Br. 8). Perjury before the grand jury must be the quintessential example of a "related matter developed in the course" of the investigation.

gress expected the Attorney General's determination of whether further investigation or prosecution is warranted to be influenced by the "legitimate exercise of discretion and the [Justice] Department's established policies of law enforcement." S. Rep. No. 496, 97th Cong., 2d Sess. 14 (1982).

Viewed against this backdrop, the initial decision to apply for appointment of independent counsel is fully within the control of the Executive branch, and constitutes a policy decision over the use of the power to enforce the criminal law which the independent counsel is not free to disregard. Accordingly, the range of discretionary decision-making available to independent counsel is somewhat restricted, a point which we stress in our main brief, but which Deaver has construed as an argument that independent counsel is *required* to prosecute in all cases. Thus, Deaver twists this argument into a claim that Independent Counsel regards his role as one in which prosecution must be brought "so long as there are any facts concerning any matter that will support any theory of prosecution," and that Independent Counsel is free to disregard the Justice Department guidelines. (*Id.*) This is neither the point made in our main brief nor the experience in the Deaver case.

As Deaver well knows, the Independent Counsel in his own case chose to go forward on a much more limited theory of criminal liability than was at least theoretically possible. Moreover, in the Deaver case, the Justice Department guidelines on prosecutorial decision-making were utilized. (Main Brief of Independent Counsel Seymour at 15, n.13).

7. The Special Employee Status Order Is No Evidence of Judicial Usurpation of Non-Judicial Authority

Tracking the majority opinion of the Court of Appeals, Deaver attempts to build a constitutional mountain out of the administrative molehill of the Special Division order of July 2, 1986, which designated the Independent Counsel and a number of his assistants as "special employees" and re-affirmed their statutory independence from the Department of Justice. The majority opinion condemns this order (and the parallel order applying to Independent Counsel Morrison) as an *ex parte* proceeding (Slip Op. p.80-81); the Deaver brief calls it a "stunning usurpation of non-judicial authority" (Br. 13). The reality is much simpler than both of these fanciful characterizations.

We have included in the Appendix (at 7-18a) both the Special Division's order and the correspondence from the Office of Government Ethics which generated it (Martin to Seymour, June 5, 1986). These documents indicate that the order was originally proposed by that agency — *not* by the Special Division, and *not* by the Independent Counsel. This is what OGE advised the then recently appointed Independent Counsel:

> Pursuant to yesterday's conversation, I am recommending that you apply to the D.C. Circuit Court of Appeals to amend its order to designate your appointment as one that, in its best estimate, includes duties which will require you to serve for a period not to exceed 130 days within the 365 days following your appointment as Independent Counsel. The foregoing comports with the definition of a special Government employee as contained in Title 18 U.S.C. § 202. A prospective determination by the court that the duties of your office will not exceed

> 130 days within a 365 day period following your appointment will be determinative of your status regardless of how many days during that period you actually work. Such a determination has been reflected in past Orders appointing Independent Counsels. (10a)

The letter went on to volunteer two opinion letters concerning prior appointees (12-18a) which expressed the view that an independent counsel and his or her assistants were deemed to be employees of the Department of Justice for conflict-of-interest purposes. This opinion was not only inconsistent with the plain language of the statute, but also contrary to the actual nature of the working relationship in the offices of independent counsel.

This presented a dilemma: the candidates being recruited for the Deaver investigation were almost all former Assistant U.S. Attorneys from New York. All were recruited for short-term part-time work, to be fitted in alongside their other professional obligations. Most had some involvement in the representation of private clients before local U.S. Attorneys' offices around the country. If their agreement to perform this public service (at a nominal per diem compensation) would mean they or their firms would be disqualified from continuing their present representations, they would be barred from working on the matter. Equally important, under the OGE interpretation, they potentially could face future motions from U.S. Attorneys' offices seeking to disqualify them from wholly unrelated cases. Oral assurances, therefore, were not enough. They needed some protection in writing in case the question should be raised in the future with respect to their firms and their clients.

Independent Counsel Seymour and Morrison conferred,

found they both had the same problem[9] and decided to seek clarification from the appointing authority. OGE was informed and stated it had no objection to the application, which was then made jointly. The Chief Judge was fully informed about the issue and was provided with the OGE letter and enclosures (which he read in the presence of both counsel). Thereafter the orders were issued. The suggestion that there was something untoward about the procedure is totally unwarranted. Moreover, the effort to use this episode as "proof" that the statute entangles the judiciary in the prosecutive process is simply extreme.[10]

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[9]A problem also inherent in accepting a dual appointment by the Attorney General, since that carries with it employment status in the Justice Department.

[10]We relegate to a footnote our response to the frivolous argument (Br. 23-24), which Deaver made on five separate occasions in the District Court, that Independent Counsel came into the investigation of Deaver's conduct with a pre-existing animus toward him, arising out of a prior dispute over "dirty tricks" by the Conservative Party of the State of New York in a U.S. Senate primary campaign. The record before the District Court clearly shows that Deaver himself had no connection with that matter; that the PAC itself had no direct participation; that his earlier affiliation with the PAC that was tangentially involved had long since ended and that in any event Seymour had no knowledge whatsoever of Deaver's tenuous past identification with the organization. In short, the entire issue was totally irrelevant, and factually unfounded. (The most succinct summary of the facts appears in the Independent Counsel's response dated October 20, 1987, filed in the District Court.)

Deaver's suggestion that the Senate should have an "advice and consent" participation in the selection of Independent Counsel disregards the practical fact that the current statutory scheme involves a thorough vetting process. As the Independent Counsel advised the District Court in response to one of the many *ad hominem* defense motions attacking the prosecution:

> We represent to this Court emphatically that to our knowledge the avoidance of conflict of interest was a *major concern* of the Special Division in its search for Independent Counsel. Attorney Seymour was personally interrogated as to potential

CONCLUSION

The independent counsel statute was enacted upon a congressional determination of the need to create a capacity for independent investigation and prosecution in those limited circumstances where the Department of Justice is disabled from going forward because of a conflict of interest. The attack on the statute by appellees and their amici aims to establish that the limited independence from executive branch control violates the structure of our national government, and necessarily endangers individual liberty. The Deaver case is a source of relevant information with regard to this dispute. An appreciation of the workings of the statute in the Deaver case confirms the wisdom of the legislative judgment reflected in the statute, and underscores the need for independence in the investigation and prosecution of wrongdoing by the class of persons covered by the statute. The Deaver record refutes the argument that the statute endangers individual liberties

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conflicts by two of the members of the panel separately, and then jointly by all three members of the panel, prior to his selection. He, in turn, made similar inquiry of every potential assistant prior to appointment to assist in the investigation.

The Independent Counsel and every Associate Independent Counsel was subjected to an FBI field investigation, reviewed by the Security Staff of the Department of Justice. In addition, the Independent Counsel and each attorney who works the requisite number of days, is also required to file Executive Personnel Financial Disclosure Reports issued by the Office of Personnel Management in accordance with the statutory requirements of the Ethics in Government Act, which specifically require disclosure of interests which might create a conflict of interest. (Independent Counsel's Response to Deaver Motion for Inquiry "As to any Conflicts of Interest," p.3)

The effort to find a constitutional defect in the independent counsel statute through this argument reveals nothing so much as the desperation of the statute's opponents.

by authorizing the exercise of unrestrained prosecutorial power.

Respectfully submitted,

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April 18, 1988

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

APPLICATION PURSUANT TO	)	
28 U.S.C. §592(c)(1) FOR THE	)	
APPOINTMENT OF AN INDEPENDENT	)	No. ____
COUNSEL TO INVESTIGATE	)	
MICHAEL K. DEAVER	)	

Pursuant to section 592(c)(1) of Title 28, United States Code, the Deputy Attorney General of the United States[1] hereby makes the following application to the Court for the appointment of an independent counsel with regard to allegations against former Chief of Staff and Assistant to the President Michael K. Deaver.[2]

I. THE ALLEGATIONS

In the early spring of 1986, various allegations concerning Mr. Deaver's lobbying business and possible resulting conflicts of interest began to appear in the press and elsewhere. The primary focus of the news stories was on Mr. Deaver's representation of foreign governments, particularly Canada in

[1]The Attorney General has recused himself and has designated the Deputy Attorney General to act in his stead for purposes of handling this matter.

[2]Mr. Deaver is covered by the independent counsel provisions of the Ethics in Government Act by virtue of his former position. 28 U.S.C.§§ 591(b)(3), (b)(6).

the course of its acid rain negotiations with the United States. On April 23, 1986, a majority of the nonmajority party members of the Committee on the Judiciary of the United States Senate, acting pursuant to 28 U.S.C. §595(e), sent a letter to the Attorney General alleging that various media reports suggested that Mr. Deaver had violated 18 U.S.C. §207, and requesting that the Attorney General determine whether or not to apply for the appointment of an independent counsel.[3]

On April 25, 1986, the Director of the Office of Government Ethics sent a letter to the Attorney General, pursuant to 28 U.S.C. §535, opining that several post federal employment activities of Mr. Deaver may have violated 18 U.S.C. §207.[4] On May 12, 1986, the General Counsel of the General Accounting Office sent a letter to the Criminal Division of the Department of Justice, opining that there existed evidence suggesting that Mr. Deaver violated 18 U.S.C. §207.[5]

After study of the allegations and the results of a factual inquiry into those allegations, the Deputy Attorney General determined that there was sufficient information to warrant applying for the appointment of an independent counsel to examine the following allegations against Mr. Deaver:

1. whether Michael K. Deaver, with the intent to influence, communicated with Robert C. McFarlane in July or August 1985, in connection with a proposal involving section 936 of the Internal Revenue Code, a particular matter pending before, and of direct and substantial interest to, the White House Office (a possible violation of 18 U.S.C §207(c));

[3]A copy of the letter is attached as Exhibit A. [Exhibit omitted]

[4]A copy each of the letter and its enclosures is attached as Exhibit B. [Exhibit omitted]

[5]A copy each of the letter and its enclosures is attached as Exhibit C. [Exhibit omitted]

2. whether Michael K. Deaver acted as a representative for the Government of Canada in an appearance October 25, 1985, before Drew Lewis, Special Envoy for the United States, in connection with a controversy between the United States and Canada about what action the United States should take in response to Canada's urging that the United States take action to eliminate or reduce acid rain (a possible violation of 18 U.S.C. §207(a)); and

3. whether Michael K. Deaver aided and assisted Canadian officials by attending the October 25, 1986, meeting (a possible violation of 18 U.S.C. §207(b)(ii)).

II. DISCUSSION OF THE ALLEGATIONS

A. Representation of the Commonwealth of Puerto Rico

Under the provisions of 18 U.S.C. §207(c), Mr. Deaver was prohibited, for one year following his resignation from federal service, from acting as a representative for anyone (except the United States) in a formal or informal appearance before the White House Office (or any of that office's officials), the office in which he served when he was Deputy Chief of Staff and Assistant to the President, in connection with any particular matter pending before the White House Office or in which that Office had a direct and substantial interest. In addition, Mr. Deaver was prohibited from making any oral or written communication to the White House Office or any of its officials, with the intent to influence, in connecton with such a particular matter.

The results of our inquiry suggest that in July or August 1985, within the year following Mr. Deaver's resignation, he telephoned Robert C. McFarlane, an official of the White

House Office at the time, identified himself as a representative of the Commonwealth of Puerto Rico, then proceeded to present to Mr. McFarlane the views of the Commonwealth of Puerto Rico about a proposal for revocation of a provision of the Internal Revenue Code of substantial interest to the Commonwealth of Puerto Rico. The results of our inquiry furthermore suggest that when Mr. McFarlane received Mr. Deaver's telephone call, Mr. McFarlane, as an official of the White House Office, was a member of a group of executive branch officials having the responsibility of examining whether or not the provision should be revoked. Whether this conduct was in violation of 18 U.S.C. §207(c) warrants further investigation.

B. Representation of the Government of Canada

Following his resignation, under the provisions of 18 U.S.C. §207(a), Mr. Deaver was prohibited for the life of a particular matter involving a specific party or specific parties from acting as a representative for anyone (except the United States) in an informal or formal appearance before any federal agency (except Congress) or official, if he participated personally and substantially in the same particular matter in his capacity as a federal official, and if the United States was a party to or had a direct and substantial interest in the particular matter. In addition, Mr. Deaver was prohibited from making any oral or written communications, with the intent to influence, to any federal agency (except Congress) or official with respect to such a particular matter involving a specific party.

Under the provisions of 18 U.S.C. §207(b)(ii), Mr. Deaver was prohibited for two years following his resignation from aiding or assisting in representing anyone (except the United States) by his personal presence at any informal or formal appearance before a federal agency (except Congress) or official,

in connection with a particular matter involving a specific party or parties in which the United States was a party or had a direct and substantial interest, and in which he participated personally and substantially as a federal official.

The results of our inquiry suggest that in the period of February through mid-March 1985, in the course of a controversy between the United States and Canada about what action the United States should take in response to Canada's urgings that the United States take action to eliminate or reduce acid rain, Mr. Deaver made recommendations, gave advice and otherwise participated substantially in the controversy. The results of our inquiry further suggest that following Mr. Deaver's resignation (May 10, 1985), on October 25, 1985, an important meeting relating to the controversy was in New York City. Mr. Deaver attended the meeting as a consultant to Canadian officials, including the Canadian Ambassador to the United States. A senior official for the United States, its Special Envoy for acid rain attended the meeting. The results of our inquiry suggest that in the course of the meeting, Mr. Deaver spoke out in the meeting, as Canada's consultant, and recommended a solution to a procedural dispute which had arisen in the course of the meeting. Whether this conduct was in violation of 18 U.S.C. §207(a) or §207(b)(ii) warrants further investigation.

III. REQUEST FOR THE APPOINTMENT OF AN INDEPENDENT COUNSEL

Mr. Deaver's post-federal employment representation of the Commonwealth of Puerto Rico and the Government of Canada could constitute a number of offenses under 18 U.S.C. §207. Appointment of an independent counsel is requested to pursue the question whether such representation violated 18 U.S.C. §207 or any other provision of federal criminal law.

IV. PROPOSED JURISDICTION OF THE INDEPENDENT COUNSEL

It is recommended that the independent counsel's jurisdiction include investigative and prosecutive authority over the specific allegations described in Part II above. In addition, it is recommended that the independent counsel's jurisdiction include investigative and prosecutive authority over all other allegations presented in the three referrals, and over any related matters developed in the course of the independent counsel's investigation.

Respectfully submitted,

/s/ D. Lowell Jensen
D. LOWELL JENSEN
Deputy Attorney General
of the United States

Dated: May 22, 1986

FILED MAY 29, 1986

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In Re: Michael K. Deaver — Division No. 86-2

Order Appointing
Independent Counsel

Before: MacKinnon, Presiding, Morgan and Mansfield,
Senior Circuit Judges

Upon consideration of the application of the Deputy Attorney General pursuant to 28 U.S.C. § 592(c)(1) for the appointment of an Independent Counsel with authority to investigate and, if warranted, to prosecute allegations that the conduct of former Chief of Staff and Assistant to the President Michael K. Deaver concerning Mr. Deaver's lobbying business and possible resulting conflicts of interest, including *inter alia* Mr. Deaver's alleged representation of foreign governments, particularly Canada in the course of its acid rain negotiations with the United States, and any related matters developed in the course of the investigation, violated 18 U.S.C. § 207, or any other provision of federal criminal law; it is hereby

ORDERED, by the Court, that Whitney North Seymour, Jr., Esquire of the New York bar, with offices at 100 Park Avenue, New York, New York be and he is hereby appointed Independent Counsel to investigate and pursue the following questions:

1. whether Michael K. Deaver, with the intent to influence, communicated with Robert C. McFarlane in July or August 1985, in connection with a proposal in-

volving section 936 of the Internal Revenue Code, a particular matter pending before, and of direct and substantial interest to, the White House Office (a possible violation of 18 U.S.C. § 207(c));

2. whether Michael K. Deaver acted as a representative for the Government of Canada in an appearance October 25, 1985, before Drew Lewis, Special Envoy for the United States, in connection with a controversy between the United States and Canada about what action the United States should take in response to Canada's urging that the United States take action to eliminate or reduce acid rain (a possible violation of 18 U.S.C. § 207(a)); and

3. whether Michael K. Deaver aided and assisted Canadian officials by attending the October 25, 1986, meeting (a possible violation of 18 U.S.C. § 207(b)(ii)); and

4. whether any allegations presented in the above three referrals, or Mr. Deaver's post-federal employment representation of the Commonwealth of Puerto Rico and the Government of Canada, or any related matters developed in the course of the Independent Counsel's investigation violated 18 U.S.C. § 207, or any other provision of federal law; and it is further

ORDERED, by the Court, that the Independent Counsel shall have jurisdiction to investigate any related matters and other allegations or evidence of violation of any Federal criminal law by Michael K. Deaver developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation, and the Independent Counsel shall have jurisdiction to prosecute for any such violation.

The Independent Counsel shall have all the powers and authority provided by the Ethics in Government Act of 1978, as amended, and specifically by 28 U.S.C. § 594 (copy attached).

[Statute omitted]

Per Curiam
For the Court

/s/ George A. Fisher/rb
George A. Fisher
Clerk

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

Jun 5 1986

Whitney North Seymour, Jr.
100 Park Avenue
New York, NY 10017

Dear Mr. Seymour:

Pursuant to yesterday's conversation, I am recommending that you apply to the D.C. Circuit Court of Appeals to amend its order to designate your appointment as one that, in its best estimate, includes duties which will require you to serve for a period not to exceed 130 days within the 365 days following your appointment as Independent Counsel. The foregoing comports with the definition of a special Government employee as contained in Title 18 U.S.C. §202. A prospective determination by the court that the duties of your office will not exceed 130 days within a 365 day period following your appointment will be determinative of your status regardless of how many days during that period you actually work. Such a determination has been reflected in past Orders appointing Independent Counsels.

Enclosed for your review and consideration are copies of this Office's informal letter opinions 84x4 dated 04/09/84 and 84x13 dated 06/15/84 which sets forth the application of the criminal conflicts of interest statutes to you and members of your staff once your and their special Government employee status has been confirmed. It should be noted that in the past, special Government employee status has been conferred upon Assistant Independent Counsels by court order. However, it

is my opinion that pursuant to Title 28 U.S.C. §594(c) such determinations should be made by you as their appointing authority.

If you serve as Independent Counsel more than 60 days, you will be required to file a public financial disclosure report, an SF 278.

Congratulations on your appointment. I am confident that you will carry out your duties in an exemplary fashion. My Office stands ready to assist you in any way that it can.

Sincerely,

/s/ David H. Martin
David H. Martin
Director

Enclosures

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

84 x 4

Letter to a Private Attorney dated 04/9/84

This letter refers to our meeting of April 6, 198′ and your subsequent correspondence of the same date.

Your letter, as well as our discussion, addressed the question whether your appointment as Independent Counsel pursuant to Title 28 U.S.C. §593 might follow the form of an order entered by the United States Court of Appeals for the District of Columbia Circuit on February 12, 1982 at the request of Leon Silverman, Esq. You provided a copy of that order for our review.

Further, you sought our explanation of the supplementation of salary prohibition of Title 18 U.S.C. §209. You also asked whether a special Government employee is forbidden to represent a client in a criminal case.

We have again reviewed the specimen order, and we reiterate that it is our position that the order would be proper to follow in obtaining special Government status pursuant to Title 18 U.S.C. .§202.

Under the federal conflict of interest laws, the term "special Government employee" is defined as a person who is retained, designated, appointed, or employed, either with or without compensation, to perform temporary duties for not to exceed 130 days out of any period of 365 consecutive days: Title 18 U.S.C. §202(a). A part of a day should be counted as a full day for the purposes of this estimate, and a Saturday, Sunday, or holiday on which duty is to be performed should be

counted equally with a regular day. Even if it becomes apparent, prior to the end of the 365 days that you have not been accurately classified, you will nevertheless continue to be considered a special Government employee for the remainder of that 365-day period. A new estimate should be made at the expiration of each 365 days thereafter. *Federal Personnel Manual*, 735-C-02.

Pursuant to Title 18 U.S.C. §209(a), it is unlawful for a federal officer or employee to receive any salary, or any contribution to or supplementation of salary, from a private source as compensation for his services to the Federal Government. However, this prohibition does not apply to a special Government employee who serves with or without compensation, Title 18 U.S.C. §209(c). Therefore, as a special Government employee, you or a member of your staff appointed pursuant to 28 U.S.C. §594(c) may continue to be compensated by your law firm even during the time that you are performing services for the Federal Government. However, as explained, there will be an independent restriction on your sharing in compensation received by the law firm in matters pending before the Department of Justice.

The restrictions on your outside activities in matters involving the United States are contained in Title 18 U.S.C. §203 and 205. The former prohibits a person from receiving, agreeing to receive, or soliciting compensation for services rendered by himself or another before a federal department or agency at the time he is an officer or employee of the United States. Section 205 prohibits an officer or employee from acting as agent or attorney for anyone before a federal agency or in court in a matter in which the United States is a party or has a direct and substantial interest and from receiving any gratuity or interest in a claim in consideration of his assistance in the prosecution of a claim against the United States. However, §203

and 205 both have a more limited application to special Government employees.

A special Government employee is subject to §203 and 205 only in relation to a particular matter involving a specific party or parties (1) in which he, at any time, participated personally and substantially while in Government or (2) which is pending in the department in which he is serving. Moreover, the latter prohibition applies only to a special Government employee who has served in the department for more than 60 of the preceding 365 days. You have not served in the Department of Justice during the last year. Therefore, the prohibition against your acting as agent or attorney in matters pending in the Department of Justice and receiving compensation for services rendered before a federal department in relation to such matters will not go into effect until you have actually performed services as Independent Counsel on all or part of 60 of the next 365 days. Until that time, you could personally represent clients in matters pending before the Justice Department, and you could share in your law firm's fees for its services performed in matters before the Department.

If you should perform duties as Independent Counsel on all or part of 60 days, however, you would be barred from personally representing a client in a matter "pending in" the Justice Department, and your firm would have to take measures to ensure that any compensation you might continue to receive from the firm was not attributable to services the firm performed in relation to matters pending in the Justice Department and was not compensation for any advice or assistance you might render to your partners or associates who were prosecuting claims pending in the Department.

A case or other matter is not regarded as pending in the Department for purposes of these restrictions if it is within

the jurisdiction of a court. Thus, if an information or indictment has been filed in a criminal case or a complaint has been filed in a civil case, the matter is no longer pending in the Justice Department. Even after expiration of the 60-day period mentioned above, then, you could personally represent a client in court or before the Department in such criminal cases, and your partnership draw could include fees for these cases. The prohibitions mentioned above would only apply to a grand jury or other investigations or discussions with the Justice Department prior to the filing of an information or indictment in a criminal case and to administrative and civil matters pending in the Department prior to the filing of a law suit.

Please feel free to contact me if you wish to further discuss these matters.

Sincerely,

David H. Martin
Director

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

84 x 13

Letter to a Private Attorney dated 06/15/84

On June 4, 1984, this Office received your letter dated May 9, 1984 requesting that we confirm your understanding of the application of the criminal conflict of interest statutes to [an attorney associated with your firm. The attorney] has been appointed by the Independent Counsel appointed to investigate certain allegations relating to [a specific individual] to serve as an assistance Independent Counsel. During this same time, [the attorney] will continue to serve in an of counsel capacity to your law firm.

It is the position of this Office that the services provided by [the attorney] under his appointment as an assistant Independent Counsel pursuant to the authority in 28 U.S.C. § 594(c) are services provided to the Department of Justice for purposes of the conflict of interest statutes. [See 84 x 4] For purposes of this response, we are assuming that [the attorney] was appointed as a special government employee as that term is defined in 18 U.S.C. § 202. Therefore, the provisions within the criminal conflict of interest statutes that limit the application of those statutes for special government employees to matters which are "pending in" the department or agency which the individual is serving will apply in [the attorney's] case to matters "pending in" the Department of Justice. Moreover, you are correct that [the attorney] does not qualify for the even more limited restrictions of 18 U.S.C. §§ 203 and 205 for special government employees who have served no more than 60 days in their department or agency during the immediately preceding 365 day period. His service

as a full time employee of the [Department] during any portion of that preceding 365 day period must be counted for purposes of determining whether he has served more than 60 days during that period.

Your understanding of this Office's interpretation of when a matter is considered to be "pending in" the Department of Justice is also correct. [The attorney] is prohibited by Section 205 from representing any person to the Department on such matters and is prohibited by Section 203 from receiving any compensation for representational services rendered by anyone else on these matters. With regard to your statement that you believe he is free to consult with other lawyers in your firm on these matters, you are correct that such consultations are not prohibited by Section 205. Before engaging in any such consultations, however, [the attorney] may wish to review the standards of conduct applicable to special government employees of the Department of Justice and all applicable rules of professional conduct for any additional restrictions which may apply.

For purposes of your Section 203 analysis, while you state [the attorney] does not share in the profits of the firm and is compensated on a fixed salary basis by your firm, if at the end of the firm's fiscal year it determines that it will give bonuses to associates or persons serving in of counsel positions, [the a orney's] bonus may not be calculated on any amount that includes fees generated by the firm's representation of clients on matters "pending in" the Department of Justice while he served as a special government employee of the Department. A bonus based in any part on these fees would be prohibited by that section in the same manner as a partnership distribution.

While the supplementation of a government employee's salary by a source other than the Federal government is pro-

hibited by 18 U.S.C. § 209, subsection (c) of that section specifically exempts special government employees from this prohibition. Therefore, there is no criminal conflict of interest provision which will prohibit you from supplementing [the attorney's] Federal compensation in order that he will not, by acting as an assistant Independent Counsel, receive less total compensation during that same time than the firm, prior to his appointment, had agreed to pay him for his of counsel services.

Finally, you are correct in your interpretation of the extent of restrictions of 18 U.S.C. §§ 207(a) and (b)(i) as they are applicable to [the attorney] once he terminates his position with the Department. We do not believe that his position as assistant Independent Counsel is one which is automatically a "senior employee" position pursuant to 18 U.S.C. § 207(d)(1)(A) and, given the level of position indicated by the daily rate of pay stated on his appointment, that position is not eligible to be designated as such by this Office under Section 207(d)(1)(C). Therefore, it is our opinion that [the attorney] will not be subject to the restrictions of Sections 207(b)(ii) and (c) upon leaving his position of assistant Independent Counsel.

If this letter raises further questions, please feel free to contact this Office.

Sincerely,

David H. Martin
Director

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, as Amended

In re: Michael K. Deaver — Division No. 86-2

Designation of
Special Government
Employees

Before: MacKinnon, Presiding, Morgan and Mansfield,
Senior Circuit Judges

ORDER

By order of this Court entered May 29, 1986, Whitney North Seymour, Jr. was appointed Independent Counsel in this matter to perform the duties described in that order, with the powers and authority provided by 28 U.S.C. § 594.

Mr. Seymour has informed the Court that, as provided in 28 U.S.C. § 594(c), he has appointed DAVID BRODSKY, ANDREW JOSHUA LEVANDER, JOHN W. NIELDS, JR., NICHOLAS SCOPPETTA, and PAUL SHECHMAN to assist him in carrying out the duties of Independent Counsel.

Mr. Seymour has further informed the Court that his best estimate of time required for him and each of his assistants to carry out their duties will not exceed 130 days within the 365 days following his appointment as Independent Counsel and that their work will be carried out in complete independence and separation from the United States Department of Justice.

In consideration of the foregoing, the Court concludes that the time estimate, and representation regarding independence from the Department of Justice, are reasonable, and accordingly, it is hereby

ORDERED, pursuant to 18 U.S.C. § 202, that WHITNEY NORTH SEYMOUR, JR., DAVID BRODSKY, ANDREW JOSHUA LEVANDER, JOHN W. NIELDS, JR., NICHOLAS SCOPPETTA and PAUL SHECHMAN, are designated and classified as Special Government Employees of the Office of Independent Counsel as a separate special agency for the limited purposes described in the Court's Order of May 29, 1986, and for no other purpose, and in connection with this cause are not to be considered employees of, or subject to the supervision or control of the United States Department of Justice for any purpose, including the provisions of 18 U.S.C. § 203(c) or § 205; and it is further

ORDERED, that this Order be filed with the Clerk of the Court and maintained under seal, subject to the further order of the Court.

Per Curiam
For the Court:

_____

George A. Fisher
Clerk

FILED JUL 2 1986
GEORGE A. FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Division for the Purpose of Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In Re: Michael K. Deaver Division No. 86-2

PETITION OF WHITNEY NORTH SEYMOUR, JR.

Whitney North Seymour, Jr., respectfully petitions the Court for the issuance of a Supplemental Order clarifying the Independent Counsel's jurisdiction to prosecute violations of the Federal criminal law pursuant to the Court's order of May 29, 1986.

It has come to the Independent Counsel's attention during the course of his investigation that certain persons and entities may have conspired with and aided and abetted Michael K. Deaver in violating 18 U.S.C. Section 207; that certain officers and employees of Michael K. Deaver and Associates, Inc., of which Mr. Deaver is founder and principal stockholder, may have violated 18 U.S.C. Section 207; and that various persons may have obstructed justice, given false testimony or made false statements during the course of the Independent Counsel's investigation and the preliminary investigations leading up to his appointment.

In addition, the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce of the House of Representatives has requested the Independent Counsel to investigate Mr. Deaver's testimony before that committee on May 16, 1986, and to prosecute Mr. Deaver for any false testimony given before the Subcommittee on that date.

Although this Court's order of May 29, 1986 appears to include jurisdiction to prosecute such offenses, it would be

desirable for the Court to clarify its specific intent in order to minimize delays in any possible subsequent prosecutions caused by procedural challenges to the jurisdiction of the Independent Counsel questioning his authority to initiate and conduct such prosecutions. Accordingly, petitioner prays that an order be made and entered providing such clarification.

Respectfully submitted,

/s/Whitney North Seymour, Jr.
Whitney North Seymour, Jr.

Washington, D.C.
December 11, 1986

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In Re: Michael K. Deaver Division No. 86-2

Supplemental Order

Before: MacKinnon, Presiding, Morgan and Mansfield, Senior Circuit Judges

Upon the petition of Independent Counsel Whitney North Seymour, Jr., appointed by order of this Court on May 29, 1986, it is hereby

ORDERED, by the Court, that the order of May 29, 1986 in the above entitled cause appointing Whitney North Seymour, Jr. as Independent Counsel is hereby amended and supplemented as follows:

With reference to the Court's filed order, page 2 paragraph 4. in the 5th line of said paragraph after the word "further" and before the word "ORDERED" in the next line, insert the following:

ORDERED, by the Court, that the jurisdiction of such Independent Counsel to investigate and prosecute any related matters developed in the course of his investigation shall include jurisdiction to investigate and prosecute any person or entity who

(1) has unlawfully conspired with or aided and abetted Michael K. Deaver to violate 18 U.S.C. Section 207 or any other provision of federal criminal law;

(2) has violated 18 U.S.C. Section 207 or any other provision of federal criminal law while acting as an officer or employee of Michael K. Deaver and Associates, Inc.; or

(3) has obstructed the due administration of justice, given false testimony, or made any false statement in violation of the Federal criminal law in connection with the investigation conducted by the Independent Counsel pursuant to this Court's order of May 29, 1986 or the preliminary investigations leading up to such order; and it is further

ORDERED, by the Court, that such Independent Counsel shall have jurisdiction to prosecute Michael K. Deaver for any willfully false material testimony given to the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce of the United States House of Representatives on or about May 16, 1986 relevant to any material matters within the jurisdiction of the Independent Counsel's investigation; and it is further

Per Curiam
For the Court

/s/George A. Fisher
George A. Fisher
Clerk